

SENATE RECORD VOTE ANALYSIS

105th Congress
1st Session

Vote No. 33

March 19, 1997, 12:04 pm
Page S-2501 Temp. Record

INDEPENDENT COUNSEL FOR ALL CAMPAIGNS/Tabled

SUBJECT: A resolution expressing the sense of Congress that the Attorney General should exercise her best judgment when deciding whether to start the independent counsel process . . . S.J. Res. 23. Lott motion to table the resolution.

ACTION: MOTION TO TABLE AGREED TO, 58-41

SYNOPSIS: As introduced, S.J. Res. 23 will express the sense of Congress that the Attorney General should exercise her best professional judgment, without regard to political pressures and in accordance with the standards of the law and the established policies of the Justice Department, to determine whether the independent counsel process should be invoked to investigate allegations of criminal misconduct by any government official, Member of Congress, or other person in connection with any presidential or congressional election campaign.

Debate was limited by unanimous consent. Following debate, Senator Lott moved to table the resolution. Generally, those favoring the motion to table opposed the resolution; those opposing the motion to table favored the resolution.

Those favoring the motion to table contended:

Argument 1:

The record does not warrant, nor does the law permit, an independent counsel investigation into congressional fundraising in the 1996 Federal elections. Democrats anxious to protect their political party want to obfuscate the issue by suggesting that legal campaign activities by congressional Democrats and Republicans are in the same category as the deluge of allegations of illegalities by the Clinton Administration. There is a vast difference between legal activities that some people say are improper and activities that violate the law. Our colleagues do not contend that allegations have been made of Republicans politicizing intelligence agencies, giving Federal appointments in return for campaign contributions, awarding contracts in return for contributions, using Federal

(See other side)

YEAS (58)			NAYS (41)		NOT VOTING (0)	
Republicans (55 or 100%)	Democrats (3 or 7%)		Republicans (0 or 0%)	Democrats (41 or 93%)	Republicans (0)	Democrats (0)
Abraham	Hutchinson	Feingold	Akaka	Inouye		
Allard	Hutchison	Moynihan	Baucus	Johnson		
Ashcroft	Inhofe	Wellstone	Biden	Kennedy		
Bennett	Jeffords		Bingaman	Kerrey		
Bond	Kempthorne		Boxer	Kerry		
Brownback	Kyl		Breaux	Kohl		
Burns	Lott		Bryan	Landrieu		
Campbell	Lugar		Bumpers	Lautenberg		
Chafee	Mack		Byrd	Leahy		
Coats	McCain		Cleland	Levin		
Cochran	McConnell		Conrad	Lieberman		
Collins	Murkowski		Daschle	Mikulski		
Coverdell	Nickles		Dorgan	Moseley-Braun		
Craig	Roberts		Durbin	Murray		
D'Amato	Roth		Feinstein	Reed		
DeWine	Santorum		Ford	Reid		
Domenici	Sessions		Glenn	Robb		
Enzi	Shelby		Graham	Rockefeller		
Faircloth	Smith, Bob		Harkin	Sarbanes		
Frist	Smith, Gordon		Hollings	Torricelli		
Gorton	Snowe			Wyden		
Gramm	Specter					
Grams	Stevens					
Grassley	Thomas					
Gregg	Thompson					
Hagel	Thurmond					
Hatch	Warner					
Helms						

VOTING PRESENT(1)
Dodd

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

resources to solicit contributions, or of committing any of the other offenses which the Clinton Administration and the Clinton campaign have allegedly committed. Our colleagues do not contend that the Justice Department has been investigating such allegations against Republicans for the past 3 months, nor do they contend that it has convened a grand jury because of such allegations. Our colleagues do not make such contentions because they know that they are not true. Of course, our colleagues have heard of an investigation and grand jury regarding the Clinton Administration. Congress is going to investigate illegal as well as improper activities of the 1996 elections. An independent counsel, if appointed, will investigate illegal activities. There is substantial, credible evidence of such activities regarding the Clinton Administration and Clinton campaign; there is not such evidence regarding either Republican or Democratic congressional offices or campaigns. The fact that the available evidence warrants an independent counsel investigation of the Clinton White House does not make it proper or legal to appoint an independent counsel to engage in a fishing expedition of congressional campaigns in an attempt to find wrongdoing. Evidence of wrongdoing is needed; it is not legal to launch a broad investigation just to look bipartisan.

Even if the past several months had seen an equal deluge of credible allegations against Republican Members the appointment of an independent counsel to examine those allegations would not be legal, and, even more on point, would not make any sense. Under the law, the Attorney General may conduct a preliminary investigation to determine if an independent counsel should be appointed to investigate a Member if two conditions are met. First, she must receive credible information that a Member violated a Federal criminal law. Second, she must determine that a preliminary investigation is in the "public interest." The public-interest test is not some ill-defined standard that leaves it up to the Attorney General's opinion. Rather, the legislative history of the law clearly sets forth the two circumstances that meet the public-interest test. First, a counsel can be appointed to avoid a conflict of interest. That test is obviously not met in this case. No Senator can say with a straight face that an independent counsel is needed because this Democratic Administration will otherwise be too nice in an investigation of Republican Members. Second, a counsel can be appointed so that Members will not be "unfairly subjected to a more rigorous application of criminal law than other citizens." In this case, such disparate treatment is not possible, because private citizens, not being in office, obviously cannot be guilty of misusing their offices in elections.

We understand our Democratic colleagues' discomfort over the number and severity of the allegations that have been lodged against the leader of their party. Some of us who are Republicans were here in the early 1970s, and went through a similarly painful process in Watergate. Our party was damaged greatly by that scandal, but we pursued the investigation in a bipartisan manner, and our country was strengthened as a result. Our Democratic colleagues should similarly be willing to put their country ahead of their party. An investigation is needed, and they should be taking the lead in calling for one. This resolution, which does not even call for the appointment of an independent counsel and which inaccurately implies that the allegations that have been made against Members are of the same order as the allegations that have been made against the President, is a partisan disgrace. We urge its rejection.

Argument 2:

We agree with our colleagues that congressional activities in the recent elections deserve as much attention as the Administration's activities. However, this resolution does not even call for the appointment of an independent counsel. We are Democrats, but we will not let party loyalty prevent us from doing our public duty of calling for the appointment of an independent counsel. We opposed the last resolution solely because it exempted Congress; we will oppose this resolution because it will exempt both Congress and the President. This resolution totally shirks Congress' responsibility in this matter, and should therefore be rejected.

Those opposing the motion to table contended:

The resolution before us strikes the right balance. It does not seek to give political instructions to the Attorney General on a question that should be decided on strictly nonpartisan considerations. Instead, it urges her to use her best judgment. At the same time, it helpfully draws attention to the fact that independent counsels can be appointed to investigate Members of Congress as well as the President. In so doing it recognizes that serious allegations have been made concerning Republican improprieties in the last congressional elections. If there is an independent counsel appointed, that counsel should look at all presidential and congressional election activities. Such an investigation, if warranted, will be in the public interest, and will be similar to the investigation of the 1996 Federal elections that the Senate has agreed it will conduct. The Senate investigation will look at illegal and improper activities. We expect that the Attorney General will follow the Senate's lead should she determine that any action at all is necessary. If our colleagues agree with us that this decision should be left up to the Attorney General, and that any investigation that occurs should include Congress, then they should join us in supporting this resolution.